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# Case Comments

Dicta Editorial Board

# CASE COMMENTS

NEGLIGENCE: CLARK V. THE JOSLIN DRY GOODS COMPANY.[1] The plaintiff in error, Kittie Clark, brought action for injuries sustained in a fall upon the sidewalk in front of defendant, Joslin's store. She alleged that her injuries were proximately caused by defendant's negligent manner of window washing. This alleged negligence consisted of permitting water to collect on the sidewalk during this operation. At the conclusion of the plaintiff's evidence the case was taken from the jury and judgment entered for defendant. Upon writ of error to the Supreme Court of Colorado the decision of the lower court was affirmed. The grounds upon which the affirmance was based being a lack of any evidence of negligence upon the part of the defendant, the obvious inference is that either plaintiff's negligence was the sole proximate cause of her fall or the mishap was an unavoidable accident. The court's reference to and quotation from *Garbanati v. City of Durango*,[2] indicates that the prior and not the later accounted for, in the eyes of the court, the plaintiff's injury. In either event the decision is completely orthodox in that regard.

The interesting feature of the opinion is the following language by the court:

> There is no evidence in the record to indicate that the window washing being done on the morning of the accident, was conducted in other than the usual and customary manner of performing such task.

From this statement it appears that the court is considering evidence of custom and usage without first requiring that the existence of the custom and usage be established. It is to be noted that the defendant had put on no evidence. It seems inconceivable that the plaintiff would offer evidence of the custom and usage in the trade and thus defeat herself. Apparently, then, either Colorado does not require any evidence of custom and usage to establish this defense to alleged negligence or our Supreme Court will take judicial notice of accepted methods of window washing. In either alternative this would, indeed, appear to be strange law.

EDWARD L. TRUE.

JUDGMENTS: A CUSTODIAL ORDER IS NOT A FINAL JUDGMENT. Where there is a right there should be a remedy; but apparently this is not always true.

In the recent case of *Miller v. Miller*[3] the Supreme Court of Colorado disregarded one of the most fundamental principles of of procedural due process, the right of judicial review.

The Supreme Court held that where a child becomes a ward

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[1] —— Colo. ——, 1953-54 C.B.A. Adv. Sh. No. 2, p. 37

[2] 30 Colo. 358, 70 P. 686.

[3] —— Colo. ——, (1953-54) C.B.A. Adv. Sh. No. 7.

of a county court by virtue of a divorce action, the court has continuing jurisdiction and a custodial order is not a final judgment which can be appealed.

Chapter 46, section 165, '35 C.S.A., provides that "appeals may be taken to the district court of the same county, from all *final judgments* and decrees of the county court, except judgments by confession, by any person aggrieved by any such final judgment or decree." How should the words "final decree" be interpreted? The Colorado Supreme Court has held that a judgment awarding temporary alimony is final in the sense that it may be reviewed by writ of error from the Supreme Court when rendered in a divorce action.[4]

The words "final judgment," as used in the Rules of Civil Procedure governing writs of error and as used in the statute governing appeals from the county court to the district court, apparently do not have the same meaning. There should be no distinction between an order granting temporary alimony and an order governing the custody of children so far as finality of judgment is concerned.

If Colorado continues to require a greater degree of finality in a judgment to appeal to the district court than is required for a writ of error from the Supreme Court, then an aggrieved parent is without an effective remedy.

LOREN PARRAGUIRRE

# OPINIONS OF COLORADO BAR ASSOCIATION COMMITTEE ON ETHICS AND GRIEVANCES

## OPINION NO. 1

(Adopted July 31, 1953)

The Committee has been asked to pass upon the propriety of the following language used by an attorney on business cards, letter-heads, and envelopes:

(Lawyer's name)
Attorney at Law—Certified Public Accountant
(Lawyer's address)

Attention is called to the following language in Opinion No. 272 of the Committee on Professional Ethics and Grievances of the American Bar Association:

> We are all confident that a lawyer could not, as a practical matter, carry on an independent accounting business from his law office without violating Canon 27.
>
> The Committee all agree that a lawyer, who is also a C.P.A. may perform what are primarily accounting serv-

[4] Daniels v. Daniels, 9 Colo. 133, 10 P. 657 (1886).
Miller v. Miller, 78 Colo. 376, 241 P. 1112 (1925).
Tedman v. Tedman, 78 Colo. 57, 239 P. 877 (1925).
Hultquist v. Hultquist, 77 Colo. 260, 236 P. 777 (1925),

ices, as an incident to his law practice, without violating our Canons. We are also agreed that he may not properly hold himself out as practicing accounting at the same office as that in which he practices law. . . .

The Committee is in agreement with the language above quoted and considers it controlling.

## OPINION NO. 2
(Adopted July 31, 1953)

The Committee has been asked to consider the propriety of using the imprint "Tax Expert" on the office door and business cards and other stationery used by an attorney.

The Committee is of the opinion that such usage is improper and that Opinion No. 175 of the Committee on Professional Ethics and Grievances of the American Bar Association is controlling. This Opinion reads in part as follows:

> We are of the opinion that it is not permissible to include in a simple professional card language indicating that the lawyer restricts his practice to any particular class of work not generally recognized as a specialty. Obvious examples of the latter are "Admiralty" and "Patents, Trademarks, and Copyrights." Any class of work which the average lawyer is equipped and willing to handle cannot be said to be a specialty despite the fact that a lawyer may restrict himself to such a class of work and acquires an unusual degree of proficiency and experience in handling the same. Any specification of particular types of work necessarily carries an inference that unusual ability or experience is asserted and consequently noticed or advertised. The fact that the motive may be to obviate the necessity of refusing other types of work does not avoid the inference. . . .